

PUBLIC ADMONISHMENT OF JUDGE PETER J. McBRIEN

The Commission on Judicial Performance has ordered Judge Peter J. McBrien publicly admonished pursuant to Article VI, section 18(d) of the California Constitution and Commission Rule 115, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Judge McBrien has been a judge of the Sacramento County Superior Court since July 1989; his current term began in January 1997. He was previously a judge of the Sacramento County Municipal Court from April 1987 to July 1989.

On October 27, 2000, Judge McBrien pled nolo contendere to a violation of Penal Code section 384a, a misdemeanor, was found guilty, and was placed on probation.

Penal Code section 384a prohibits the willful or negligent cutting or mutilation of any tree growing upon public land or the land of another without permission. Judge McBrien's criminal conviction arose out of the 1999 cutting of trees, and removal of limbs from trees, on public land adjacent to his residence. The trees were growing in a nature center located in a public park owned by the County of Sacramento. The trees included mature oaks, and were cut for the purpose of improving the view of a nearby river from the McBrien residence. The trees were cut without the permission of the County of Sacramento.

The terms of Judge McBrien's probation included payment of \$20,000 in restitution to the County, as well as a \$500 fine. Judge McBrien complied with the terms of his probation, and his probation therefore terminated. His subsequent petition pursuant to Penal Code section 1203.4 was granted.

Judge McBrien's conduct evidenced disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics, including failure to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved (canon 1), and failure to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2), and constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (California Constitution, Article VI, section 18(d).)

In a letter to the commission, Judge McBrien stated, "I sincerely regret my misdemeanor violation of the law, primarily because it brings dishonor and disrespect to the bench."

Judge McBrien's conduct was the subject of numerous news articles, including in the *Sacramento Bee* and *Sacramento News & Review*.

Commission members Judge Rise Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall Grossman, Mr. Michael Kahn, Mrs. Crystal Lui, Ms. Ramona Ripston, Ms. Barbara Schraeger, and Dr. Betty Wyman voted to impose a public admonishment. Commission member Justice Vance W. Raye recused himself from participating in this matter. Commission member Ms. Gayle Gutierrez did not participate in this matter.

April 25, 2002